Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
Equal Access and Interconnection	)	CC Docket No. 94-54
Obligations Pertaining to	)	RM-8012
Commercial Mobile Radio Services	)	

COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Gary M. Epstein
James H. Barker
LATHAM & WATKINS
Suite 1300
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2505
(202) 637-2200

and

Richard C. Rowlenson
VANGUARD CELLULAR SYSTEMS, INC.
2002 Pisgah Church Road
Suite 300
Greensboro, North Carolina 27455
(910) 545-2223
Senior Vice President and General Counsel,
Vanguard Cellular Systems, Inc.

September 12, 1994

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
Equal Access and Interconnection	)	CC Docket No. 94-54
Obligations Pertaining to	)	RM-8012
Commercial Mobile Radio Services	)	

COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard") hereby submits the following Comments in the above-captioned matter.

I. INTRODUCTION AND SUMMARY

The Commission has tentatively concluded, in response to a petition for rule making filed by MCI,[1/] that "equal access" obligations should be extended to all providers of cellular telephone service.[2/] As one of approximately eighty independent cellular carriers not subject to such restrictions, Vanguard strongly urges the Commission to reject this tentative conclusion. Equal access obligations are creations of the Bell System divestiture decree (the "Modified Final Judgement" or "MFJ") and were originally designed to ensure that the Bell Operating Companies ("BOCs") that retained control over access bottlenecks did not use that control to restrain competition in the developing long distance market. Although equal access obligations were subsequently extended to cellular affiliates of the BOCs as a matter of MFJ interpretation, equal access restrictions (until now) have never been extended to independent cellular providers as a matter of Federal Communications Commission policy.

1/ MCI Telecommunications Corporation, Policies and Rules Pertaining to Equal Access Obligations of Cellular Licensees, Petition for Rule Making (June 2, 1992) ("MCI Petition").

2/ See In the Matter of Equal Access and Interconnection Obligations Pertaining to commercial Mobile Radio Services, CC Docket No. 94-54, RM-8012, Notice of Proposed Rule Making and Further Notice of Inquiry (July 1, 1994) ("Notice"), at ¶ 35.

Having never before looked to the MFJ for guidance or precedent in its oversight of the development of cellular service, the Commission should avoid doing so now. From its inception, cellular service has not been confined to artificial geographic distinctions between "local" and "long distance" service. The Commission's policies have allowed cellular carriers to configure their systems in the most efficient manner to meet the demands of mobile users, and to consolidate their systems into seamless regional and nationwide networks. In addition, the Commission has made significant efforts in recent years to structure a dynamic and competitive wireless marketplace that will foster the most efficient provision of telecommunications services to end users at reasonable prices and with minimal Commission intervention.

The immensely successful development of cellular service, in conjunction with the rapidly accelerating deployment of competitive wireless alternatives to cellular, makes the Commission's current equal access proposal puzzling and misguided. Regulatory intervention of the magnitude that the Commission proposes at a minimum requires a strong public interest showing of the benefits, competitive or otherwise, that such intervention will promote. In this case, however, there is little good that will come of the Commission's proposed regulations. The purported "benefits" of equal access provision cited in the Notice do not begin to outweigh the costs and detriment that equal access will cause for independent cellular providers and their customers.

In the discussion below, Vanguard shows -- with the help of Professor Jerry Hausman of MIT, whose Statement is included as Attachment 1 -- that the imposition of equal access obligations in the cellular context is unnecessary given the degree of present and emerging competition to cellular providers; will be costly to cellular providers and their subscribers; will not result in lower prices to cellular customers; will discourage investment in seamless wide area systems; and in general has little meaning or utility in a competitive

wireless marketplace. Equal access obligations will also reduce competition in the long distance marketplace at the very time the Commission is seeking to foster such competition. Many cellular companies, via resale or otherwise, provide long distance service. These sources of interexchange competition will vanish if equal access is imposed. In the end, the only beneficiaries of equal access will be the interexchange carriers -- and their benefits will be reaped at the expense of cellular providers and cellular customers with no corresponding public interest gain.

In sum, the Commission's proposal to extend a regime of burdensome regulatory requirements to non-BOC cellular providers is simply out of step with the Commission's own efforts to foster an expanding level of competition in the CMRS industry. It also undercuts the combined efforts of Congress and the Executive Branch to fashion a new, flexible telecommunications regulatory regime that will "facilitate greater economic growth by removing regulatory barriers."[3/] Imposition of equal access obligations at this time would be a move in the wrong direction just as competition is growing rapidly.[4/] The Commission should therefore reject the Notice's tentative conclusion.

II. EXTENDING EQUAL ACCESS OBLIGATIONS TO INDEPENDENT CELLULAR PROVIDERS WILL DISSERVE THE PUBLIC INTEREST

The Commission has invoked Section 201(a) of the Communications Act as the legal basis for its ability to order cellular and other CMRS providers to provide equal access.[5/] Assuming that Section 201(a) applies, Vanguard agrees that equal access obligations may be imposed upon CMRS providers only if the public interest would be

---

3/ See, e.g., Administration White Paper on Telecommunications Reform at 1 (1994).

4/ Hausman Statement at ¶ 40.

5/ Notice at ¶ 31.

served thereby.[6/] According to the Notice, application of this public interest standard depends on two factors: (1) analysis of the market power of the various CMRS providers, and (2) whether public policy goals identified with the provision of CMRS would be satisfied.[7/] For the reasons that follow, Vanguard believes that the Commission's application of this standard to impose and extend equal access obligations to all cellular service providers -- including small and medium sized providers -- is severely flawed. Given the increasing level of wireless competition from new CMRS entrants and the absence of cellular carrier market power, the imposition and extension of equal access requirements is unnecessary, and instead is likely to lead to higher costs, inefficient networks, and subsequently higher prices for cellular customers.[8/]

A. There Are No Historical, Legal or Public Policy Bases for Extending Equal Access Obligations to Independent Cellular Providers

As Vanguard and many other commenters recognized in response to the MCI Petition, and as the Notice acknowledges, equal access obligations were special creations of the MFJ, imposed by the Court to promote the development of a competitive long distance market following the separation of AT&T's long distance services from the Bell system local exchanges. Because BOCs at the time of divestiture retained monopoly control of access bottlenecks, the MFJ court attempted to ensure that BOCs did not use their market power to

---

6/ Id.

7/ These include: i) efficient provision to consumers of service at reasonable prices; ii) establishing a regulatory structure that will foster competition; and iii) promoting and achieving the broadest possible access to telecommunications networks and services by all telecommunications users. See id.; CMRS Second Report and Order, 9 FCC Rcd at 1417-22.

8/ Because, as demonstrated below, imposition of equal access obligations on independent cellular operators such as Vanguard would not be in the public interest, the Commission cannot make the requisite finding under Section 201(a). Adoption of an equal access obligation would thus constitute reversible legal error.

behave in a manner that would inhibit the development of interexchange competition to AT&T. While it is true that equal access restrictions were eventually extended to cellular affiliates of the BOCs by the MFJ Court, this action was once again grounded in residual caution over the possible extension of perceived BOC market power over landline exchanges, and not because of any inherent market power possessed by the cellular providers themselves.[9/]

In light of this background, the Commission's present proposal to superimpose and extend the terms of the negotiated settlement between AT&T and the Department of Justice to a new and rapidly-evolving commercial mobile services industry -- including small and medium-sized cellular providers that have never been subject to such restrictions -- fails both the "market power" and "public policy" tests of Section 201.

First, in applying the first prong of its Section 201 public interest standard to cellular providers, the Commission recognizes in the Notice that "imposition of equal access obligations when the service provider does not possess market power may not be in the public interest."[10/] Yet, the Commission has never established whether and the extent to

---

9/ As the Court of Appeals later observed, because "exchange service" at the time of divestiture was conceptualized only as local landline telephone service, the drafters of the MFJ appear not to have even contemplated that special forms of exchange service such as cellular would evolve in a manner that would allow the BOCs to provide service outside of their geographic service regions in competition with landline services of other BOCs. See United States v. Western Electric Co., 797 F.2d 1082, 1087 (D.C. Cir. 1986). Nevertheless, because cellular services appeared to fall largely within the MFJ's definition of "local exchange operations," the Department of Justice invoked the "bottleneck" theory to extend the MFJ's equal access obligations to BOC-affiliated cellular companies.

10/ Notice at ¶ 34. Indeed, the Commission goes on to explain:

> Such action can have unintended consequences which could detract from or undermine the potential benefits of imposing equal access. For example, the costs of implementing equal access may be so high that it could force some smaller carriers out of the market, thereby reducing competition. More important, competition alone in a particular market may compel carriers to offer choices their customers want

which cellular providers possess market power.[11/] Although the Commission has not conclusively determined whether the cellular service marketplace is fully competitive,[12/] it has acknowledged that facilities-based cellular carriers "are competing on the basis of market share, technology, service offerings and service price,"[13/] that "there is no indication that anticompetitive pricing is occurring,"[14/] and that sufficient competition exists in cellular service to justify Commission forbearance from Title II regulation.[15/]

Such findings of competition do not support the extreme regulatory intervention in the cellular marketplace that the Commission has now proposed, especially given that, as explained below, the primary impact of the Commission's proposal will be felt by those providers who are the least likely to possess market power, i.e., the small and medium-sized non-BOC affiliated providers.[16/] Moreover, as the Commission has

---

without the need of regulatory intervention.

Id. These are some of the precise reasons that support not extending equal access obligations to small and medium-sized cellular providers like Vanguard.

11/ See Hausman Statement at ¶ 34.

12/ Notice at ¶ 42; see CMRS Second Report and Order, 9 FCC Rcd 1411, 1467 (1994).

13/ Cellular CPE Bundling Order, 7 FCC Rcd 4028, 4029 (1992).

14/ Id. at 4034, n. 20.

15/ CMRS Second Report and Order, 9 FCC Rcd at 1467; see Notice at ¶ 33.

16/ As Professor Hausman observes:

> I am unaware of any studies which demonstrate or claim market power for small to medium-sized cellular providers such as Vanguard. Cellular prices are typically significantly lower in smaller MSAs and RSAs which Vanguard competes in, versus the considerably higher cellular prices in large MSAs such as New York or Los Angeles.

Hausman Statement at ¶ 34; cf. also United States v. Western Electric Co., Civil Action No. 82-0192 (HHG) (August 25, 1994), at 17 (finding that the "'A' block cellular systems at issue

acknowledged, the consequence of equal access implementation for these providers could well be a decreased ability to compete against current and emerging competition that in extreme cases could force smaller providers out of markets altogether.[17/]

Second, the Notice acknowledges that the Commission's tentative decision to extend equal access regulatory obligations to all cellular providers does not take into account the implications of emerging CMRS competition to cellular service. This is a factor which must be taken into account in the Commission's public interest analysis. Once the full extent of existing and emerging wireless competitors to cellular service is considered, the imposition and/or extension of equal access obligations simply cannot be justified.

Wireless competition to cellular service is emerging on a daily basis. One new CMRS entrant, Nextel, has begun full operation of its ESMR network, with aggressive plans and sufficient spectrum to serve approximately seventy percent of the population of the United States within the next two years.[18/] Similarly, the FCC has been moving rapidly and aggressively in its broadband Personal Communications Services (PCS) and related auction proceedings to implement a regulatory framework that will guarantee a minimum of three new 30 MHz PCS entrants and possibly more[19/] in markets currently served by cellular providers.[20/] These licenses are expected to be auctioned in a few short months,

---

do not constitute bottleneck monopolies").

17/ See Notice at ¶ 34.

18/ See Hausman Statement at ¶ 10.

19/ The Commission also created three smaller 10 MHz PCS licenses that will overlay current cellular markets. These licenses, particularly if aggregated, may provide additional strong mobile service competitors to cellular.

20/ See, e.g., Amendment of the Commissions Rules to Establish New Personal Communications Services, Gen. Docket No. 90-314, RM-7140, RM-7175, RM-7618, Memorandum Opinion and Order (June 13, 1994), at ¶ 26; In the Matter of Implementation of Section 309(j) of the

and broadband PCS should begin to provide significant new competition to cellular beginning in 1995 or 1996.[21/] Thus by the time that equal access plans could be fully implemented, they will be absolutely unnecessary, because there will be a total of approximately three to five strong competitors in the wireless marketplace competing directly with cellular service.

The rapid emergence of new wireless competitors is in large part attributable to the Commission's efforts in recent years to structure a competitive wireless marketplace that does not require extensive Commission oversight. The Commission's proposed imposition of equal access obligations, however, is markedly inconsistent with those pro-competitive efforts. If presubscription to a long distance carrier of choice is truly a desirable feature to cellular customers -- and the record evidence to date indicates that it is not -- then various IXCs and CMRS providers will combine to offer it.[22/] However, the complete absence of evidence of independent cellular provider market power, combined with the rapid introduction of new competitive CMRS alternatives, makes unnecessary the creation of another layer of costly and burdensome equal access regulations.[23/] Indeed, as Professor Hausman observes, a competitive marketplace featuring multiple wireless competitors provides a far better means of protecting consumers than an interventionist regulatory process

---

Communication Act - Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order (July 15, 1994).

21/ Id. at ¶ 12.

22/ Indeed, in markets currently served by BOC cellular affiliates, that choice is available today. Furthermore, several commenters to the MCI Petition noted that cellular customers in most cases can access the long distance provider of their choice by dialing an 800 or 950 number or by using a 10XXX access arrangement. Vanguard customers, for example, may access the interexchange carrier of their choice by dialing a 10XXX number. Such numbers can often be pre-programmed into intelligent handsets such that dialing is not required. See, e.g., Reply Comments of McCaw Cellular Communications, RM-8012 (Oct. 15, 1992), at 4.

23/ See id, at ¶ 34.

which in the end will benefit only large IXCs, and will merely result in higher costs to both cellular providers and customers.[24/]

Finally, the LATA-based equal access obligations imposed on BOC landline and cellular companies by the MFJ have never been in harmony with the FCC's approach to cellular licensing or the measures that the Commission has taken to promote the development of the cellular industry.[25/] The Commission's policy in licensing cellular service has not been confined to or dictated by the artificial geographical segmentation of the divestiture decree. It has instead been focused on developing the "nationwide availability" of cellular service,[26/] and serving the end-to-end needs of mobile users whose travel patterns bear no relation to the MFJ's arbitrary landline service boundaries. Simply put, landline-based distinctions between "local" and "long distance" service have had little meaning when applied to cellular service.

Vanguard believes that this point is crucial in evaluating the wisdom of importing equal access obligations from the MFJ and extending them without reasoned analysis to independent cellular providers. As Professor Hausman notes, the market actions of non-BOC cellular companies (and tellingly, of BOC-affiliated cellular companies when they have received waivers of equal access restrictions) to consolidate their service territories geographically into large regional systems -- systems which expand local calling areas far

---

24/ Hausman Statement at ¶ 8.

25/ As several BOC commenters have pointed out, the FCC argued in the divestiture proceeding in 1982 that LATA boundaries have no relevance to radio services, and that superimposing LATA-restrictions onto the Commission's SMSA-based licensing plan would create numerous conflicts and impede the development of integrated cellular systems. See Comments of Ameritech, BellSouth Corporation, NYNEX Corporation, Pacific telesis Group, and U.S. West, Inc., RM-8012 (Aug. 3, 1992), at 8; FCC Reply at 2-6, United States v. Western Electric Co., No. 82-0192 (Dec. 15, 1982).

26/ See Cellular Communications Systems, 86 FCC Rcd 469, 502 (1981).

beyond LATA boundaries -- illustrate that cellular customers value expanded geographic calling scopes.[27/] This creation of integrated regional systems located in contiguous states has allowed independent cellular providers like Vanguard to make seamless wide-area service available to customers at unitary rates with no separate long distance charges. As will be shown in more detail below, the Commission's proposed imposition of costly equal access obligations will stifle the further development of such systems, and in a real sense will ignore and distort the natural competitive development of the cellular marketplace.

B. The Extension of Equal Access Obligations to Independent Cellular Providers Will Needlessly Increase Provider Costs and Affirmatively Harm Cellular Consumers

In performing the cost/benefit analysis supporting its tentative conclusion in the Notice, the Commission acknowledges that the extension of equal access obligations to providers not currently bound by them will have immediate costs as these providers struggle to reconfigure their existing networks to accommodate the regulatory obligation.[28/] As Vanguard and other parties documented in response to the MCI Petition, these costs, e.g., modifying switching software, upgrading switches, upgrading types of interconnection, and generally overseeing the implementation and administration of a presubscription program, will likely run into the hundreds of thousands and possibly millions of dollars for each

---

27/ Hausman Statement at ¶ 45. The Commission itself has used this fact as its primary justification for creating extremely large regional Major Trading Area ("MTA") licenses in Personal Communications Services ("PCS"), recognizing repeatedly that the large transaction costs to aggregate MSAs and RSAs over the past ten years have frequently been directed towards "geographic aggregation to provide wider service areas for customers and to lower costs of providing service." Amendment of the Commission's Rules to Provide New Personal Communications Services, Gen. Docket No. 90-314, Memorandum Opinion and Order (June 13, 1994), at ¶ 76.

28/ See Notice at ¶ 40.

provider.[29/] Moreover, the Notice does not consider that for many smaller providers, at least a portion of the cost of developing, implementing and administering an equal access presubscription system may initially have to be passed through to subscribers. Unlike landline BOC telephone providers, for example, who can amortize the costs of equal access across millions of customers, Vanguard and similarly situated independent cellular providers must spread their costs over a much smaller subscriber base. This would lead to higher prices for cellular customers.

Yet, these upgrade costs are only the tip of the iceberg in considering the broader detriments of imposing equal access obligations. In applying its cost/benefit analysis to cellular providers, the Commission fails to consider the other negative effects of equal access implementation that in many cases will actually weaken competition and increase costs to cellular subscribers. These include:

- **Loss of efficiencies from vertical integration or bundling of services**

In the current environment, independent mobile carriers are able to negotiate extremely favorable volume discounts and other special arrangements with particular IXCs. Such "bundled" or "vertically integrated" arrangements yield tangible benefits to consumers,

---

29/ Vanguard's Initial Comments to the MCI Petition estimated that Vanguard's equipment and related installation costs alone would at a minimum be $30,000 per market and some $630,000 overall). This figure was conservative; it did not include the possible required upgrade of cellular switches in certain markets to a "super node" at $800,000 per switch location, nor did it consider the additional cost of personnel to oversee implementation and administration of the obligation. See Initial Comments of Vanguard Cellular Systems, Inc., RM-8012 (Sept. 1, 1992), at 4-6 & Exhibit 1, Declaration of Karen Garber. See also Comments of BMCT, L.P., RM-8012 (Sept. 2, 1992), at 2-4 (equal access would cost approximately $ 219,000 to implement for 3500 subscribers); Comments of the Cellular Telecommunications Industry Association, RM-8012 (Sept. 2, 1994), at 10-12 (equal access costs per subscriber would be higher than in the landline context); Comments of Telephone and Data Systems, RM-8012 (Sept. 3, 1992), at 2-4 (equal access implementation would cost approximately $3.4 million initially and approximately $700,000 per year in recurring costs).

including lower costs due to economies of scope,[30] and innovative packages of services to subscribers.[31] The Notice does not and cannot explain how implementation of equal access counterbalances the sacrifice of such efficiencies.[32]

- **Reduced network efficiency**

Independent cellular providers have designed and configured their networks to respond in the most efficient manner to consumer demand for cellular service. As mentioned, they have done so free from artificial MFJ-imposed notions of having to provide "long distance" transport exclusively using interexchange facilities. Equal access obligations will likely result in the inefficient re-rerouting and handing off of calls to interexchange carriers rather than reaching the subscriber via the most direct route.

- **Loss of benefits from clustering and wide-area calling plans**

If equal access obligations are imposed on independent cellular providers, customers could well end up paying more for long distance service and losing the benefits of

---

30/ For example, as Professor Hausman observes:

> The costs of billing and collection are already undertaken by cellular companies, and the incremental costs to bill and collect for long distance calls are likely to be significantly lower because most of the "problem customers" will exist both with respect to their cellular airtime bills and their cellular long distance bills. These cost savings increase economic efficiency and will also lead to lower prices for cellular customers.

Hausman Statement at ¶ 38.

31/ See, e.g., Opposition of Comcast Cellular Communications, Inc., RM-8012 (Sept. 2, 1994), at 7-8 (Comcast's bulk purchases of IXC services enable it to offer free unlimited long distance on weekends and specialized packages for business consumers that maximize all long distance volume discounts).

32/ The Notice recognizes that if each of bundled services is competitive, customers can choose their desired offerings from other providers, and that such bundling may provide consumers with benefits that disaggregated services would not. Notice at ¶ 41 (citing Bundling of Cellular Customer Premises Equipment and Cellular Service, CC Docket No. 91-34, Report and Order, 7 FCC Rcd 4028 (1992).

67"seamless" regional clusters. Once again, this problem is grounded in the fact that MFJ-modeled equal access obligations are incompatible with the fundamental manner in which the Commission has actively encouraged providers to offer cellular service.

Many independent cellular providers like Vanguard have created integrated regional system clusters that essentially offer customers wide-area "local" calling from anywhere within the regional cluster. These subscribers in most cases pay less for calls that would otherwise be classified as "long distance" calls if the calls were made via landline exchanges. By way of example, for many calls made by Vanguard subscribers within or around areas covered by Vanguard's Mid-Atlantic "Supersystem" -- which covers much of eastern Pennsylvania and portions of New York and New Jersey -- customers are charged only the unitary, "local" per-minute airtime rate for cellular service;[33/] they are not billed separately for air time and long distance toll charges.[34/]

The beneficial service packages and savings to consumers resulting from cellular provider investment in regional "supersystems" and concomitant creation of wide area calling plans can be quite significant. In order to illustrate this point, Vanguard has attached the Declaration of Elizabeth Jones as Attachment 3 hereto. Ms. Jones performed a sample analysis of one Vanguard market, Allentown, Pennsylvania, in the process breaking

---

33/ For example, a Vanguard subscriber located in Reading, Pennsylvania calling someone in Philadelphia, Pennsylvania -- which would normally be a landline long distance call -- is able to make the Vanguard cellular call toll-free, and thus incurs only local airtime charges. Sample rate plans for different Vanguard markets which show the extensive number of exchanges available to customers toll-free (depending on their location within Vanguard's service areas) are attached as Attachment 2.

34/ Calls placed by the subscriber and destined for areas outside of the system cluster or wide-area plan usually will be handed off to and IXC chosen by the cellular carrier, often one with whom the cellular carrier has negotiated a bulk discount. Most carriers either pass through these discounts to subscribers, or charge subscribers IXC standard retail rates in order to support new investment or reduce capital costs.

out the non-toll free landline exchanges and corresponding long distance charges that Vanguard's Allentown customers would otherwise have paid had they independently subscribed to AT&T under an equal access regime. Using rates obtained from AT&T, the analysis shows that Vanguard's Allentown customers would have been charged an additional $45,749 in the month of August alone for long distance calls! This represents an average average increase of $2.38/month for each Allentown subscriber.[35/] Given that this example merely covers one month of calling in one medium-sized market, it is not difficult to see that if all of Vanguard's markets were considered, the net increase in long distance charges for Vanguard subscribers under an equal access regime would be enormous.

In light of the above, it is plain that the extension of equal access obligations to non-BOC cellular providers will not lower prices to consumers, but will simply transfer revenue from cellular carriers to the large IXCs. Indeed, in looking at the only "case study" in which equal access obligations have been imposed on CMRS providers -- the BOC-affiliated cellular context -- Professor Hausman has reached a similar conclusion. Specifically, Professor Hausman notes that although AT&T has significantly lower access costs in the cellular as opposed to the landline telephone context, it charges BOC cellular customers the same price as landline long distance customers. Because no meaningful competition among the IXCs exists for BOC cellular traffic, AT&T and other IXCs are not constrained by competition to pass the lower cellular access costs through to customers in the form of lower long distance prices. Thus, Professor Hausman concludes that extending equal

---

35/ See Jones Declaration at ¶ 7; see also Reply Comments of Horizon Cellular Telephone Company, RM-8012 (Oct. 15, 1992), at 3 ("Horizon's system in Pennsylvania 10 (Bedford) provides toll-free service over many exchanges that are toll calls on the landline system, and its Pennsylvania 6 (Lawrence) system, in cooperation with the neighboring A-block system, provides toll-free service over virtually the entire 412 area code, a far wider area than is provided toll-free by the landline telephone company. To require equal access would turn some toll-free areas into toll areas.).

access obligations to non-BOC cellular providers will not result in lower prices to customers.[36/] Instead, imposing equal access on non-BOC cellular carriers will merely exacerbate the problem, resulting in higher costs for cellular providers, higher prices for cellular customers, and more profit for the large IXCs.[37/]

- **Reduction in coverage, network investment and new services**

Ultimately consumers will feel the consequences of this needless redistribution of revenue to IXCs, not only in price but in the quality and geographic scope of the cellular service they enjoy. Cellular telephony is a capital intensive business. Independent cellular providers like Vanguard have a limited pool of capital to invest in expanding and upgrading their networks, building out wide-area systems, upgrading channel capacity or implementing innovative new services. The diversion of capital required by implementing and maintaining equal access obligations -- for which there appears to be little customer demand -- will ultimately slow investment in and expansion of cellular systems into the nationwide networks originally envisioned by the Commission in licensing cellular service.

C. The Countervailing "Benefits" of Equal Access Are Illusory

In order to justify the costs to both providers and consumers described above, the public interest benefits of imposing equal access should be substantial. In this regard, however, the "benefits" cited by the FCC do not come close to justifying the extensive marketplace intervention the Commission has tentatively proposed.

The first benefit justifying equal access cited by the Commission is increased consumer choice and possibly lower consumer prices for long distance calls originating or

---

36/ See Hausman Statement at ¶¶ 25-33. To the contrary, because the ability of cellular companies like Vanguard to buy long distance service in bulk will be eliminated by equal access, Professor Hausman predicts that non-BOC cellular long distance prices will also increase since the cellular companies' marginal costs will rise. Id. at ¶ 33.

37/ Id. at ¶ 8.

terminating on consumers' cellular systems. But as explained above and in more detail by Professor Hausman in his attached Statement, equal access obligations will raise and not lower prices to cellular consumers. This is because individual cellular providers such as Vanguard will no longer be able to negotiate bulk discounts with IXCs and, as demonstrated by the BOC cellular equal access experience, the IXCs will charge the cellular customer the higher nondiscounted price.[38/] Moreover, to the extent that customers desire choice among competing interexchange carriers, the rapidly emerging competition in the CMRS marketplace is the best gauge for and means of satisfying that demand. With multiple CMRS competitors, the combination of consumer demand and competitive market will generate numerous CMRS arrangements with multiple interexchange carriers.

Next, the Commission claims that equal access will increase the access of end users and other telecommunications providers to networks as well as network usage by expanding the range of IXCs from which customers could choose.[39/] This justification fails on two counts. First, as Professor Hausman points out, the imposition of equal access obligations will result in decreased network usage because higher cellular long distance prices will lead to decreased demand. It is unlikely that customers will value access to an increased number of long distance carriers if that access comes at a significantly higher price.[40/]

Second, when the Notice speaks in terms of promoting a "network" of networks through equal access obligations, it fails to account for the countervailing detrimental effect that equal access will have on the continued development of seamless wide

---

[38/] See id. at ¶¶ 32, 41.

[39/] Notice at ¶ 37.

[40/] See Hausman Statement at ¶ 42.

area cellular systems -- systems that are truly developing into efficient, interconnected, nationwide networks in response to consumer demand.

The third benefit proffered by the Notice is that equal access obligations could stimulate long distance providers to develop combined offerings for discounted long distance service that could combine residential, wireline and cellular usage.[41/] Yet, as Professor Hausman observes, these carriers have the power to do this today. The fact that IXCs do not develop such combined offerings demonstrates either a lack of customer demand or the exploitation of market power by the IXCs given their ability to charge above-competitive cellular long distance prices.[42/] In any event, as discussed above, IXCs will have ample opportunity to develop these packages with ESMR and PCS providers if customers demand them. The Commission should simply allow the competitive wireless marketplace it has structured to work.

Finally the Commission invokes the often misused concept of "regulatory parity" to support its equal access proposal.[43/] As a justification for equal access, however, the term is utterly ambiguous. Independent cellular providers are as distinguishable from or as similar to BOC-affiliated providers as they are to PCS or wide-area ESMR systems. Thus, "regulatory parity" could mean treating BOC and non-BOC affiliated cellular providers alike. It could as easily mean treating non-BOC cellular providers like PCS, ESMR, and even cable television systems providing telephone service alike. More fundamentally, however, regulatory parity is not a good valued by consumers -- only lower prices and higher quality service are valued by consumers. Because imposition of equal access will

---

41/ See Notice at ¶ 38.

42/ Hausman Statement at ¶ 43.

43/ Notice at ¶ 39.

likely lead to higher prices for consumers, regulatory parity is hardly a "benefit" justifying such imposition.[44/]

III. IF EQUAL ACCESS FOR INDEPENDENT CELLULAR OPERATORS IS IMPLEMENTED, IT SHOULD NOT INCLUDE ALL OF THE BURDENSOME ELEMENTS OF LANDLINE EQUAL ACCESS

For reasons set forth above Vanguard strongly opposes any extension of equal access obligations to non-RBOC cellular providers. In the event that the Commission nevertheless decides to impose some type of equal access regulatory obligation on independent cellular providers, it must be far more narrowly circumscribed than current landline restrictions. Vanguard below addresses some of the specific equal access implementation issues raised in the Notice.

A. Timing

In the event that equal access obligations are imposed on cellular or other CMRS providers, the Commission has tentatively concluded that they should be phased in gradually. Vanguard supports this decision. As Vanguard and other providers have already shown, and as the Notice recognizes, independent providers will require significant time and capital to upgrade their networks in order to accommodate equal access obligations. Moreover, the Commission correctly anticipates that the cost impact of such upgrades will be particularly acute for smaller or rural carriers.[45/]

Vanguard proposes that, at a minimum, independent cellular providers be given an equal access phase-in period similar to independent local exchange carriers, i.e., three years from the time a bona fide request for equal access service is received to convert

---

[44/] Hausman Statement at ¶ 44.

[45/] Notice at ¶ 54.

certain end offices and switches.[46] Like independent LECs, independent cellular companies also frequently serve smaller or rural markets which are sparsely populated and "high cost" from a carrier perspective. Given the significant additional costs that equal access obligations will impose, independent cellular providers should be given enough leeway to complete the necessary upgrades and network reconfiguration in a manner that will not jeopardize the very existence of their businesses.

B. Local Service Area/Point of Interconnection

In seeking to determine at what point calls should be handed off to an interexchange carrier pursuant to any newly imposed equal access requirement, the Commission has acknowledged that the calling areas of many mobile services are not confined to the LATA boundaries imposed on the BOCs by the MFJ. Instead, they feature wide-area or regional calling areas developed in response to consumer demand. As mentioned, independent cellular providers like Vanguard have aggregated systems into regional clusters that have allowed consumers to realize tremendous benefits, including wider "local" calling areas and seamless roaming capability. In fact, the evident benefits of larger geographic service areas have been reflected in the MFJ Court's recent approval of the merger between AT&T and McCaw, which will provide customers with a seamless, nationwide communications network.[47] They are also reflected in the FCC's decisions to

---

[46] See MTS/WATS Phase III Order, 100 FCC 2d at 862-63; Notice at ¶ 52.

[47] McCaw has been at the forefront in opposing the imposition of equal access requirements on cellular providers, as its comments to date in this proceeding reflect. Recently, however, McCaw agreed to accept equal access as a condition of its settlement with the Department of Justice in order to facilitate its merger with AT&T. See United States v. AT&T Corp. and McCaw Cellular Communications, Inc., Civ. Action No. 94-01555 (HHG), Proposed Final Judgment and Competitive Impact Statement, 59 Fed. Reg. 44,158 (Aug. 26, 1994). The circumstances surrounding this negotiated settlement, involving the merger of the dominant provider of interexchange service to landline and cellular customers in the United States with the largest provider of cellular services in the United States, should have no effect on the

license much larger MTA service areas in broadband PCS; to create nationwide licenses in narrowband PCS;[48] and even to allow for the creation of a nationwide PCS license through immediate aggregation in the broadband PCS auctions.[49] The Commission also has permitted Nextel to establish and operate a nationwide ESMR network.

Against this background, as the cellular/CMRS marketplace continues to evolve, Vanguard agrees that it would be senseless for the Commission to stifle the continued development of innovative wide-area service offerings by imposing an unnecessarily restrictive local service territory definition for equal access.[50] If equal access is implemented, Vanguard recommends that the Commission adopt MTA (or larger) regional boundaries for purposes of determining the point at which calls must be handed off from a cellular to a long distance provider. MTAs at least approximate the expanded regional calling areas that have developed in cellular, and they are being used as licensing areas in broadband PCS. In any event, however, the Commission must settle upon a local area service definition that does not undercut the manner in which the CMRS marketplace has developed to date. Customers desire the efficiencies and benefits attending service areas of

---

Commission's equal access policy determination in this proceeding.

48/ See Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, 9 FCC Rcd 1309, 1310-11 (1994).

49/ The Commission originally allowed for the possibility of nationwide licensing in its proposal to use combinatorial bidding for broadband PCS licenses. See In the Matter of Implementation of Section 309(j) of the Communication Act - Competitive Bidding, PP Docket No. 93-253, Notice of Proposed Rule Making (October 12, 1993), at ¶ 120. The Commission has since adopted a simultaneous multi-round auction approach for broadband PCS licensing that it recognizes could achieve the same result by "allowing bidders ample opportunity to express the value of interdependent licenses." Fifth Report and Order at ¶ 35.

50/ Notice at ¶ 66.

expansive geographic scope. In implementing equal access, the Commission should not impose restrictive geographical limits which deprive customers of such benefits.

IV. INTERCONNECTION ISSUES

Apart from equal access issues, the Notice also seeks comment on several questions regarding the interconnection obligations of LECs to CMRS providers, and CMRS providers to one another.

With respect to LEC-to-CMRS provider interconnection obligations, the Commission seeks comment on whether LECs should be required to offer interconnection to CMRS providers under tariff pursuant to Section 203, or whether the Commission should retain its current requirement that LECs establish, through good faith negotiations with CMRS providers, the rates, terms and conditions of interconnection.[51/] Vanguard urges the Commission to retain its current practice. LECs and cellular carriers now have significant experience negotiating interconnection agreements, and Vanguard agrees that this process generally has resulted in lower rate levels than tariffing would have produced, given the administrative, time and other costs that attend the tariffing process. Interconnection agreements, as opposed to tariffs, also recognize the "co-carrier" status of cellular providers. Moreover, Vanguard's experience confirms the observation in the Notice that negotiation generally results in better-tailored service arrangements than are possible under a tariffed rate structure. Such flexibility will be increasingly vital given the rapid technological developments in the CMRS marketplace.[52/] Finally, while Vanguard understands the fears expressed by some new entrants that they will lack the bargaining power to secure fair and reasonable interconnection arrangements, such concerns do not warrant the imposition of

---

51/ Notice at ¶ 113.

52/ See id. at ¶ 114.

tariffing requirements. Given the presence of larger, sophisticated CMRS providers who will be purchasing interconnection, it will be difficult for LECs to evade their obligation to provide reasonably priced, non-discriminatory access.

As to the Commission's inquiry into CMRS-to-CMRS interconnection, Vanguard believes that, in the short term at least, the Commission should rely on the marketplace to foster the Commission's objective of promoting the availability of a variety of services to consumers, while continuing to monitor whether this goal is being accomplished. The CMRS marketplace is percolating with emerging CMRS competition, and it is simply unclear what effect, if any, that mandatory CMRS-to-CMRS interconnection would have in the marketplace.

It may be, for example, that once CMRS-to-LEC interconnection has been established, there will be no need for the Commission to further dictate the specific terms of interconnection between mobile providers. LEC interconnection will provide CMRS carriers and their customers with access to a variety of networks, and individual CMRS providers may wish to negotiate for direct interconnection only if such arrangements are more efficient. On the other hand, Commission-imposed requirements of CMRS-to-CMRS interconnection risk hampering new providers with additional regulatory costs at a time when the Commission is in the process of structuring and stimulating a vibrant, competitive CMRS marketplace. On balance, given the amount of emerging competition and the uncertain need for or awareness of the consequences of imposing a CMRS-to-CMRS interconnection obligation, the Commission should refrain from pursuing the idea further until the CMRS marketplace become more mature.

V. CONCLUSION

The Commission's tentative conclusion to impose equal access obligations on non-BOC providers is wrong as a matter of law and policy. There is no strong public interest supporting such regulatory intervention. The primary result of equal access implementation will be a pointless redistribution of revenue from independent cellular operators -- including the small and medium-sized providers who can least afford such a transfer -- to large IXCs like AT&T, MCI and Sprint. There will be no corresponding benefits to the public. To the contrary, the end result will be a rise in the marginal costs of cellular operators and corresponding additional charges to consumers. This result will distort the marketplace and the cellular carriers' ability to provide the public with wide-area seamless systems. The public interest simply does not support the Commission's proposal to burden a competitive and still-developing industry with intrusive and unwarranted requirements. The Commission should therefore reject its tentative conclusion and trust the competitive wireless marketplace that it has worked so hard to structure to meet the demands of consumers.